

EVAN ROSE, Cal. Bar No. 253478
MATTHEW D. GOLD, N.Y. Bar No. 2073963
LAURA FREMONT, Cal. Bar No. 159670
ERIC EDMONDSON, D.C. Bar No. 450294
KERRY O'BRIEN, Cal. Bar No. 149264
DAVID M. NEWMAN, Cal. Bar No. 54218
LINDA K. BADGER, Cal. Bar No. 122209
LIN W. KAHN, Cal. Bar No. 261387

Address: Federal Trade Commission
901 Market Street, Suite 570
San Francisco, CA 94103

Email: erose@ftc.gov
mgold@ftc.gov
lfremont@ftc.gov
eedmondson@ftc.gov
kobrien@ftc.gov
dnewman@ftc.gov
lbadger@ftc.gov
lkahn@ftc.gov

Telephone: (415) 848-5100
Facsimile: (415) 848-5184

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

KELLOGG, HUBER, HANSEN, TODD,
EVANS & FIGEL, P.L.L.C.
Michael K. Kellogg (*pro hac vice*)
Mark C. Hansen (*pro hac vice*)
Email: mkellogg@khhte.com
mhansen@khhte.com

1615 M Street, N.W., Suite 400
Washington, DC 20036
Telephone: (202) 326-7900
Facsimile: (202) 326-7999

SIDLEY AUSTIN LLP
David L. Anderson, Cal. Bar No. 149604
Email: dlanderson@sidley.com

555 California Street, Suite 2000
San Francisco, CA 94104
Telephone: (415) 772-1200
Facsimile: (415) 772-7400

Attorneys for Defendant
AT&T MOBILITY LLC

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AT&T MOBILITY LLC, a limited liability
company,

Defendant.

Case No. 14-cv-04785-EMC

**JOINT STATEMENT AND ~~[PROPOSED]~~
ORDER REGARDING PHASED
DISCOVERY**

1 The parties to the above-entitled action hereby submit this Joint Statement and
 2 [Proposed] Order Regarding Phased Discovery pursuant to the Court's Order Denying
 3 Defendant's Motion to Stay (Dkt. #89).

4 **I. BACKGROUND**

5 On August 18, 2015, Defendant AT&T Mobility LLC ("AT&T") filed a motion to stay
 6 proceedings pending resolution of an interlocutory appeal ("Motion to Stay") (Dkt. #79). After
 7 briefing by AT&T and Plaintiff Federal Trade Commission ("FTC"), the Court heard oral
 8 argument on September 24, 2015. During the hearing, and by written order on September 25,
 9 2015 (Dkt. #89), the Court denied AT&T's Motion to Stay but ordered that "the parties shall
 10 phase discovery, at least through the date of the next CMC," set for January 21, 2016. The Court
 11 ordered that discovery shall proceed on the "go get" discovery requests discussed at the hearing,
 12 but not on the "monthly data" requests. The Court also ordered the parties to meet and confer as
 13 to how best to phase discovery of relevant custodians' emails and other documents, including,
 14 for example, identifying the particular custodians whose documents shall be produced during this
 15 phase of discovery.

16 **II. AGREEMENT ON PHASED DISCOVERY**

17 Having met and conferred, the parties have reached the following agreement:

18 A. AT&T shall produce, to the extent such documents exist and are reasonably
 19 accessible, documents responsive to the following requests in the FTC's First Set of Requests for
 20 Production of Documents and Other Tangible Things, as memorialized and limited in
 21 correspondence between the parties or in AT&T's document responses and objections, otherwise
 22 known as the "go get" requests: 1-7, 11-12, 13(a), 13(p), 13(s), 13(t), 17-18, 20-23, 25-26, and
 23 29-32. The FTC reserves the right to request, after January 21, 2016, that request 13(u) be
 24 treated as a "go get" request, and AT&T reserves the right to challenge such a request.

25 B. AT&T shall produce responsive non privileged or non attorney work product
 26 emails or other documents from the following custodians subject to the search terms and date
 27 ranges agreed to by the parties as of the date of this filing, as memorialized and limited in
 28 correspondence between the parties:

- 1) Mark Collins
- 2) Matthew Haymons
- 3) Kristin Rinne
- 4) David Christopher
- 5) Andrew Wilson
- 6) Maurice James
- 7) Rick Fish
- 8) Jill Root
- 9) Kristin Nelson
- 10) Dave Saska
- 11) Bill Hogg
- 12) Mitch Farber

Upon review, to the extent any of the agreed upon search terms for the custodians above generate a disproportionately large volume of non-responsive documents, the parties agree to work cooperatively in good faith to revise or otherwise modify those search terms during this period.

C. The FTC shall produce responsive non privileged or non attorney work product documents responsive to the following requests in AT&T's First Set of Requests for Production of Documents, as memorialized and limited in correspondence between the parties or in the FTC's document responses and objections, otherwise known as the "go-get" requests: 1, 3-27, 29-30, 32-36. Specifically, the FTC shall produce consumer complaints regarding AT&T's throttling program received through the Consumer Sentinel Network, the Better Business Bureau, the Federal Communications Commission, and directly from consumers. The FTC shall produce any additional communications with AT&T consumers whom the FTC sought to or did interview, as well as an updated Rule 26(a) disclosure identifying by name and other contact information the 10-15 potential customer witnesses no later than January 14, 2016. The FTC will also produce consumer complaints concerning other companies' throttling programs received through the Consumer Sentinel Network, subject to the search terms identified in

1 correspondence between the parties and with consumer names and contact information redacted.
2 AT&T reserves the right to seek, after January 21, 2016, the consumer names and contact
3 information of consumers who complained about other companies' throttling programs, and the
4 FTC reserves the right to challenge such a request. The FTC will further produce documents
5 from third parties responsive to AT&T's document requests as set forth in the FTC's Responses
6 to AT&T Mobility LLC's First Set of Requests for Production of Documents. Finally, the FTC
7 shall produce publicly available information from the FTC's website regarding the FTC's action
8 against TracFone Wireless, Inc.

9 D. The parties shall produce the documents described in paragraphs A, B, and C on a
10 rolling basis, and production shall begin promptly or as soon as practicable upon entry of a
11 Protective Order. The parties shall endeavor in good faith to complete the production of all
12 documents described in paragraphs A, B, and C by January 14, 2016. With respect to the
13 documents described in paragraphs A and B, AT&T shall produce documents dated prior to June
14 12, 2015. The FTC reserves the right to seek, after January 21, 2016, documents dated after June
15 12, 2015, and AT&T reserves the right to challenge such a request. The production of
16 documents described in paragraph B shall begin with production of documents from Mark
17 Collins, Matthew Haymons, and Kristin Rinne.

18 E. Neither party waives any right to seek further discovery after January 21, 2016,
19 with respect to the productions agreed to in paragraphs A, B, and C, or with regard to any
20 Interrogatory Responses provided to date, or any document responses or objections provided to
21 date.

22 F. Finally, the parties have agreed not to conduct depositions during this phase of
23 discovery.
24
25
26
27
28

1 Dated: October 8, 2015

Respectfully submitted,

2 /s/ Evan Rose

3 EVAN ROSE
4 MATTHEW D. GOLD
5 LAURA FREMONT
6 ERIC EDMONDSON
7 KERRY O'BRIEN
8 DAVID M. NEWMAN
9 LINDA K. BADGER
10 LIN W. KAHN

Attorneys for Plaintiff
FEDERAL TRADE COMMISSION

11 KELLOGG, HUBER, HANSEN, TODD, EVANS
12 & FIGEL, P.L.L.C.
13 1615 M Street N.W., Suite 400
14 Washington, DC 20036

15 /s/ Michael K. Kellogg

16 Michael K. Kellogg
17 Mark C. Hansen

18 Attorneys for Defendant
19 AT&T MOBILITY LLC

20 SIDLEY AUSTIN LLP
21 555 California Street, Suite 2000
22 San Francisco, CA 94104

23 /s/ David L. Anderson

24 David L. Anderson

25 Attorneys for Defendant
26 AT&T MOBILITY LLC

27 (The filer attests that concurrence in the filing of this document has been obtained from the other
28 signatories.)

IT IS SO ORDERED.

Date: 10/13/15



HONORABLE EDWARD M. CHEN
UNITED STATES DISTRICT JUDGE